

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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Jeffrey Herskowitz,

Plaintiff,

**C.A. No.:** 2:22-cv-7151

-against-

**DEMAND FOR JURY TRIAL**

Transunion, LLC,  
Equifax Information Services, LLC,  
Experian Information Solutions, Inc.,  
Carrington Mortgage Services, LLC,

Defendant(s).  
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**COMPLAINT**

Plaintiff Jeffrey Herskowitz (“Plaintiff”), by and through his attorneys, and as for his Complaint against Defendant Transunion, LLC (“Transunion”), Defendant Equifax Information Services, LLC (“Equifax”), Defendant Experian Information Solutions, Inc. (“Experian”), and Defendant Carrington Mortgage Services, LLC (“Carrington Mortgage Services”) respectfully sets forth, complains, and alleges, upon information and belief, the following:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1367, as well as 15 U.S.C. § 1681p *et seq.*
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), being that the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.
3. Plaintiff brings this action for damages arising from the Defendants’ violations of 15 U.S.C. § 1681 *et seq.*, commonly known as the Fair Credit Reporting Act (“FCRA”).

**PARTIES**

4. Plaintiff is a resident of the State of New York, County of Nassau.
5. At all times material hereto, Plaintiff was a “consumer” as said term is defined under 15 U.S.C. § 1681a(c).
6. Transunion is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f) and conducts substantial and regular business activities in this judicial district. Transunion is a Delaware corporation registered to do business in the State of New York, and may be served with process upon the Prentice-Hall Corporation System, its registered agent for service of process at 80 State St, Albany, NY 12207.
7. At all times material hereto, Transunion is a consumer reporting agency regularly engaged in the business of assembling, evaluating and disbursing information concerning consumers for the purpose of furnishing consumer reports, as said term is defined under 15 U.S.C. § 1681(d) to third parties.
8. At all times material hereto, Transunion disbursed such consumer reports to third parties under a contract for monetary compensation.
9. Equifax is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f) and conducts substantial and regular business activities in this judicial district. Equifax is a Georgia corporation registered to do business in the State of New York, and may be served with process upon the Corporation Service Company, its registered agent for service of process at 80 State Street, Albany, NY 12207.
10. At all times material hereto, Equifax is a consumer reporting agency regularly engaged in the business of assembling, evaluating and disbursing information concerning consumers

for the purpose of furnishing consumer reports, as said term is defined under 15 U.S.C. § 1681(d) to third parties.

11. At all times material hereto, Equifax disbursed such consumer reports to third parties under a contract for monetary compensation.

12. Experian is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f) and conducts substantial and regular business activities in this judicial district. Experian is an Ohio corporation registered to do business in the State of New York, and may be served with process upon the C T Corporation System, its registered agent for service of process at 28 Liberty St 42nd Floor, New York, NY 10005.

13. At all times material hereto, Experian is a consumer reporting agency regularly engaged in the business of assembling, evaluating and disbursing information concerning consumers for the purpose of furnishing consumer reports, as said term is defined under 15 U.S.C. § 1681(d) to third parties.

14. At all times material hereto, Experian disbursed such consumer reports to third parties under a contract for monetary compensation.

15. Carrington Mortgage Services is a person who furnishes information to consumer reporting agencies under 15 U.S.C. § 1681s-2, with an address for service of process at C T Corporation System, 28 Liberty Street, New York, NY 10005.

### **FACTUAL ALLEGATIONS**

16. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

17. Plaintiff experienced financial difficulties due to the COVID-19 pandemic.

18. Plaintiff entered into a forbearance agreement with his mortgage servicer, Carrington Mortgage Services.

19. When the forbearance period ended, Plaintiff contacted Carrington Mortgage Services to make a payment.

20. At that time, Carrington Mortgage Services refused to accept monthly payments from Plaintiff.

21. Carrington Mortgage Services advised Plaintiff to fill out an application that would get him back on a payment plan.

22. Following Carrington Mortgage Services' instructions, Plaintiff filled out the appropriate application and submitted it.

23. Carrington Mortgage Services rejected Plaintiff's application and was told to redo it.

24. During this time, Carrington Mortgage Services refused to accept any payments from Plaintiff.

25. This back-and-forth went on for months until Carrington Mortgage Services filed a foreclosure lawsuit against Plaintiff.

26. The foreclosure proceeding was filed in the Supreme Court of the State of New York, County of Nassau with Index number 611568/2022.

27. All the while, during the period subsequent to the forbearance period, Plaintiff was willing and able to make monthly payments.

28. Carrington Mortgage Services began reporting Plaintiff as late during the period subsequent to forbearance.

29. Carrington Mortgage Services went straight to reporting Plaintiff as 180 days late in the month following the forbearance period.

30. Prior to the forbearance period Plaintiff was on time for his monthly mortgage payments.

Carrington Mortgage Services Dispute and Violation

31. Upon information and belief, on a date better known to Transunion, Equifax and Experian (“Bureaus”), the Bureaus prepared and issued credit reports concerning the Plaintiff that included inaccurate and misleading information relating to his Carrington Mortgage Services, LLC account (Date Opened: October 30, 2015; Account Number 500001XXXX) (hereinafter “Account”).

32. The inaccurate information furnished by Carrington Mortgage Services and published by the Bureaus is inaccurate since Plaintiff was never late on the Account.

33. It is materially misleading to report Plaintiff as late when Carrington Mortgage Services was unwilling to accept payment from Plaintiff.

34. As Carrington Mortgage Services was unwilling to accept payment from Plaintiff, it is inaccurate to characterize Plaintiff as late.

35. Plaintiff disputed the Account with the Bureaus on September 6, 2022.

36. In his dispute, Plaintiff explained what happened with Carrington Mortgage Services and how they refused to accept his monthly payments.

37. The United States Postal Service confirmed receipt of Plaintiff’s dispute by the Bureaus.

38. Plaintiff sent a copy of the dispute directly to Carrington Mortgage Services to provide notice of his dispute.

39. Despite Plaintiff’s dispute and the fact that Plaintiff should not be marked late on his Account, the Bureaus continue to report Plaintiff’s Account with monthly late payment notations.

40. This inaccurate information on Plaintiff's credit report has negatively affected his credit score.

41. Other than this one derogatory Account, Plaintiff does not have any other derogatory accounts on his credit reports.

42. For all other accounts Plaintiff has perfect payment history.

43. Plaintiff sought to refinance his mortgage loan to get a fresh start and get back on track with his regular monthly mortgage payments.

44. On November 11, 2022, Plaintiff was denied a refinanced loan due to Defendants' actions and omissions.

45. Plaintiff received a letter from Funding Resources Mortgage Corporation denying his loan application due to the "pending foreclosure with Carrington Mortgage that is listed on your credit report."

46. The letter continued, "Additionally, due to this pending foreclosure, your credit scores are below our minimum credit score required."

47. The Bureaus have been reporting this inaccurate information through the issuance of false and inaccurate credit information and consumer reports that it has disseminated to various persons and credit grantors.

48. Potential credit grantors reviewed Plaintiff's credit reports, as evidenced by soft and hard pulls on Plaintiff's credit reports.

49. It is believed and therefore averred that the Bureaus notified Carrington Mortgage Services of the Plaintiff's dispute.

50. Upon receipt of the dispute of the Account from the Plaintiff by the Bureaus, Carrington Mortgage Services failed to conduct a reasonable investigation and continued to report

false and inaccurate adverse information on the consumer report of the Plaintiff with respect to the disputed Account.

51. Had Carrington Mortgage Services done a reasonable investigation of the Plaintiff's dispute, it would have been revealed to Carrington Mortgage Services that they refused to accept Plaintiff's monthly mortgage payments, which was why the payments went unpaid.

52. Despite Plaintiff's dispute that the information on his consumer reports was inaccurate with respect to the disputed Account, the Bureaus did not timely evaluate or consider any of the information, claims, or evidence of the Plaintiff and did not timely make an attempt to substantially or reasonably verify that the derogatory information concerning the disputed account was inaccurate.

53. The Bureaus violated 15 U.S. Code § 1681i (a)(1)(A) by failing to conduct a reasonable investigation since they failed to delete or correct the disputed trade line within 30 days of receiving Plaintiff's dispute letter.

54. Had the Bureaus done a reasonable investigation of the Plaintiff's dispute, it would have been revealed to the Bureaus that the Account should not be reporting with late payment notations.

55. Notwithstanding Plaintiff's efforts, Defendants continued to publish and disseminate such inaccurate information to other third parties, persons, entities and credit grantors, as evidenced by the inquiries on the Plaintiff's credit report in the form of hard and soft pulls.

56. As a result of Defendants' failure to comply with the FCRA, Plaintiff suffered concrete harm in the form of loss of credit, loss of ability to purchase and benefit from credit, a

chilling effect on applications for future credit, and the mental and emotional pain, anguish, humiliation and embarrassment of credit denial.

**FIRST CAUSE OF ACTION**

**(Willful Violation of the FCRA as to the Bureaus)**

57. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

58. This is an action for willful violation of the Fair Credit Reporting Act U.S.C. § 1681 et seq.

59. The Bureaus violated 15 U.S.C. § 1681(e) by failing to establish or to follow reasonable procedures to assure maximum possible accuracy in the preparation of the credit report and credit files that the Bureaus maintained concerning the Plaintiff.

60. The Bureaus have willfully and recklessly failed to comply with the Act. The failure of the Bureaus to comply with the Act include but are not necessarily limited to the following:

- a) The failure to follow reasonable procedures to assure the maximum possible accuracy of the information reported;
- b) The failure to correct erroneous personal information regarding the Plaintiff after a reasonable request by the Plaintiff;
- c) The failure to remove and/or correct the inaccuracy and derogatory credit information after a reasonable request by the Plaintiff;
- d) The failure to promptly and adequately investigate information which the Bureaus had notice was inaccurate;
- e) The continual placement of inaccurate information into the credit report of the Plaintiff after being advised by the Plaintiff that the information was inaccurate;

- f) The failure to continuously note in the credit report that the Plaintiff disputed the accuracy of the information;
- g) The failure to promptly delete information that was found to be inaccurate, or could not be verified, or that the source of information had advised the Bureaus to delete;
- h) The failure to take adequate steps to verify information the Bureaus had reason to believe was inaccurate before including it in the credit report of the consumer.

61. As a result of the conduct, action and inaction of the Bureaus, the Plaintiff suffered damage by loss of credit, loss of ability to purchase and benefit from credit, a chilling effect on future applications for credit, and the mental and emotional pain, anguish, humiliation and embarrassment of credit denial.

62. The conduct, action and inaction of the Bureaus was willful rendering the Bureaus liable for actual, statutory and punitive damages in an amount to be determined by a Judge and/or Jury pursuant to 15 U.S.C. § 1681(n).

63. The Plaintiff is entitled to recover reasonable costs and attorney's fees from the Bureaus in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681 (n).

WHEREFORE, Plaintiff, Jeffrey Herskowitz, an individual, demands judgement in his favor against the Bureaus for damages together with attorney's fees and Court costs pursuant to 15 U.S.C. § 1681n.

## **SECOND CAUSE OF ACTION**

### **(Negligent Violation of the FCRA as to the Bureaus)**

64. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

65. This is an action for negligent violation of the Fair Credit Reporting Act U.S.C. § 1681 et seq.

66. The Bureaus violated 15 U.S.C. § 1681i(a) by failing to delete inaccurate information from the credit file of the Plaintiff after receiving actual notice of such inaccuracies and conducting reinvestigation and by failing to maintain reasonable procedures with which to verify the disputed information in the credit file of the Plaintiff.

67. The Bureaus have negligently failed to comply with the Act. The failure of the Bureaus to comply with the Act include but are not necessarily limited to the following:

- a) The failure to follow reasonable procedures to assure the maximum possible accuracy of the information reported;
- b) The failure to correct erroneous personal information regarding the Plaintiff after a reasonable request by the Plaintiff;
- c) The failure to remove and/or correct the inaccuracy and derogatory credit information after a reasonable request by the Plaintiff;
- d) The failure to promptly and adequately investigate information which the Bureaus had notice was inaccurate;
- e) The continual placement of inaccurate information into the credit report of the Plaintiff after being advised by the Plaintiff that the information was inaccurate;
- f) The failure to continuously note in the credit report that the Plaintiff disputed the accuracy of the information;
- g) The failure to promptly delete information that was found to be inaccurate, or could not be verified, or that the source of information had advised the Bureaus to delete;

- h) The failure to take adequate steps to verify information the Bureaus had reason to believe was inaccurate before including it in the credit report of the consumer.
- 68.As a result of the conduct, action and inaction of the Bureaus, the Plaintiff suffered damage by loss of credit, loss of ability to purchase and benefit from credit, a chilling effect on future applications for credit, and the mental and emotional pain, anguish, humiliation and embarrassment of credit denial.
- 69.The conduct, action and inaction of the Bureaus was negligent, entitling the Plaintiff to damages under 15 U.S.C. § 1681o.
- 70.The Plaintiff is entitled to recover reasonable costs and attorney's fees from the Bureaus in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and 1681o.

WHEREFORE, Plaintiff, Jeffrey Herskowitz, an individual, demands judgement in his favor against the Bureaus for damages together with attorney's fees and Court costs pursuant to 15 U.S.C. § 1681o.

### **THIRD CAUSE OF ACTION**

#### **(Willful Violation of the FCRA as to Carrington Mortgage Services)**

- 71.Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.
- 72.This is an action for willful violation of the Fair Credit Reporting Act U.S.C. § 1681 *et seq.*
- 73.Pursuant to the Act, all persons who furnished information to reporting agencies must participate in re-investigations conducted by the agencies when consumers dispute the accuracy and completeness of information contained in a consumer credit report.
- 74.Pursuant to the Act, a furnisher of disputed information is notified by the reporting agency when the agency receives a notice of dispute from a consumer such as the Plaintiff. The

furnisher must then conduct a timely investigation of the disputed information and review all relevant information provided by the agency.

75. The results of the investigation must be reported to the agency and, if the investigation reveals that the original information is incomplete or inaccurate, the information from a furnisher such as the Defendant must be reported to other agencies which were supplied such information.

76. Carrington Mortgage Services violated 15 U.S.C. § 1681s-2 by failing to fully and properly investigate the dispute of the Plaintiff; by failing to review all relevant information regarding same by failing to correctly report results of an accurate investigation to the credit reporting agencies.

77. As a result of the conduct, action and inaction of Carrington Mortgage Services, Plaintiff suffered damage for the loss of credit, loss of the ability to purchase and benefit from credit, a chilling effect on future applications for credit, and the mental and emotional pain, anguish, humiliation and embarrassment of credit denials.

78. The conduct, action and inaction of Carrington Mortgage Services was willful, rendering Carrington Mortgage Services liable for actual, statutory and punitive damages in an amount to be determined by a jury pursuant to 15 U.S.C. § 1681n.

79. The Plaintiff is entitled to recover reasonable costs and attorney's fees from Carrington Mortgage Services in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

WHEREFORE, Plaintiff, Jeffrey Herskowitz, an individual demands judgement in his favor against Carrington Mortgage Services in for damages together with attorney's fees and Court costs pursuant to 15 U.S.C. § 1681n.

#### **FOURTH CAUSE OF ACTION**

##### **(Negligent Violation of the FCRA as to Carrington Mortgage Services)**

80. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

81. This is an action for negligent violation of the Fair Credit Reporting Act U.S.C. § 1681 *et seq.*

82. Pursuant to the Act, all person who furnished information to reporting agencies must participate in re-investigations conducted by the agencies when consumers dispute the accuracy and completeness of information in a consumer credit report.

83. Pursuant to the Act, a furnisher of disputed information is notified by the reporting agency when the agency receives a notice of dispute from a consumer such as the Plaintiff. The furnisher must then conduct a timely investigation of the disputed information and review all relevant information provided by the agency.

84. The results of the investigation must be reported to the agency and, if the investigation reveals that the original information is incomplete or inaccurate, the information from a furnisher such as the Defendant must be reported to other agencies which were supplied such information.

85. Carrington Mortgage Services is liable to the Plaintiff for failing to comply with the requirements imposed on furnishers of information pursuant to 15 U.S.C. § 1681s-2.

86. After receiving the Dispute Notice from the Bureaus, Carrington Mortgage Services negligently failed to conduct its reinvestigation in good faith.

87. A reasonable investigation would require a furnisher such as Carrington Mortgage Services to consider and evaluate a specific dispute by the consumer, along with all other facts, evidence and materials provided by the agency to the furnisher.

88. The conduct, action and inaction of Carrington Mortgage Services was negligent, entitling the Plaintiff to recover actual damages under 15 U.S.C. § 1681o.

89. As a result of the conduct, action and inaction of Carrington Mortgage Services, Plaintiff suffered damage for the loss of credit, loss of the ability to purchase and benefit from credit, a chilling effect on future applications for credit, and the mental and emotional pain, anguish, humiliation and embarrassment of credit denials.

90. The Plaintiff is entitled to recover reasonable costs and attorney's fees from Carrington Mortgage Services in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and 1681o.

WHEREFORE, Plaintiff, Jeffrey Herskowitz, an individual, demands judgement in his favor against Carrington Mortgage Services for damages together with attorney's fees and court costs pursuant to 15 U.S.C. § 1681o.

**DEMAND FOR TRIAL BY JURY**

91. Plaintiff demands and hereby respectfully requests a trial by jury for all claims and issues this Complaint to which Plaintiff is or may be entitled to a jury trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment from each Defendant as follows:

- a) For actual damages provided and pursuant to 15 U.S.C. § 1681o(a) be awarded for each negligent violation as alleged herein;
- b) For actual damages provided and pursuant to 15 U.S.C. § 1640(a)(1);

- c) For Statutory damages provided and pursuant to 15 U.S.C. § 1681n(a);
- d) For Statutory damages provided and pursuant to 15 U.S.C. § 1640(a)(2);
- e) For Punitive damages provided and pursuant to 15 U.S.C. § 1681n(a)(2);
- f) For attorney fees and costs provided and pursuant to 15 U.S.C. § 1681n(a)(3), 15 U.S.C. § 1681o(a)(2) and 15 U.S.C. § 1640(a)(3);
- g) For any such other and further relief, as well as further costs, expenses and disbursements of this action as this Court may deem just and proper.

Dated: November 23, 2022

Respectfully Submitted,

/s/ Tamir Saland

**Stein Saks, PLLC**

By: Tamir Saland

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